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No. 528.

In the Supreme Court

OF THE

United States.

OCTOBER TERM, A. D. 1903.

WALTER N. DIMMICK,
Appellant,

vs.

JOHN W. TOMPKINS, the Warden of the State Prison of California,
Appellee.

MOTION TO ADVANCE.

GEORGE D. COLLINS,
Attorney for Walter N. Dimmick, the Appellant.

Pernau Press, S. F.

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MOTION TO ADVANCE.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States, and to the Court:

Comes now Walter N. Dimmick, the appellant, and makes this his motion that the above entitled cause be advanced upon the calendar of your Honorable Court, for hearing and determination. That the appeal herein is taken from a judgment of the Circuit Court of the United States for the Ninth Circuit, Northern District of California, refusing and denying to the appellant, the writ

of habeas corpus in a case where the imprisonment is under color of federal authority and in violation of the Fifth Amendment. That the imprisonment is upon a certain judgment of the District Court of the United States, Northern District of California, whereby the said appellant was sentenced to imprisonment in the penitentiary of the State of California for the period of two years from the 16th day of October, A. D. 1901. That said imprisonment has expired but appellant is still deprived of his liberty and is still imprisoned in said penitentiary under pretense of said judgment, the said Circuit Court deciding that inasmuch as this appellant was not delivered to the penitentiary until April 13, A. D. 1903, the said sentence does not commence to run until that date, notwithstanding the terms of the said judgment that the said sentence of two years shall date and commence from the said 16th day of October, A. D. 1901. That unless said appeal is advanced to an early hearing, the said question and also the other questions presented in the appellant's brief, now on file herein, will become moot questions, for in any event appellant's term of imprisonment, even under the construction placed by the said Circuit Court upon the said judgment of the District Court, will expire on the 13th day of December, A. D. 1904, there being a deduction of two months in each year for good behavior. That the following are the questions raised and presented by appellant, on the said appeal, viz.:

1. Did the sentence of appellant to the penitentiary, expire on the 16th day of October, A. D. 1903, in any event?

2. If not, did the fact that on the 16th day of October, A. D. 1901, the appellant was imprisoned in the County Jail, and under the said judgment and continued a prisoner in the County Jail and under said judgment until the 13th day of April, A. D. 1903, when he was delivered over to the warden of the penitentiary and there imprisoned ever since, constitute on the 16th day of October, A. D. 1903, a *satisfaction* of the sentence of two years, the case being one of misdemeanor and not felony?

3. Is the sentence void *ab initio,* in view of the fact that therein the appellant is ordered imprisoned in the penitentiary for one year for each separate offense, the law prohibiting a sentence to the penitentiary where for any one offense, the imprisonment does not exceed one year?

4. Is the conviction and sentence of appellant, for an offense that is made a crime by any law of the United States?

5. Is the appellant deprived of his liberty without due process of law, in violation of the Fifth Amendment?

If these questions are not determined by your Honorable Court prior to the 13th day of December, A. D. 1904, they cannot be determined at all, as they then become entirely moot questions.

Wherefore the appellant, Walter N. Dimmick, prays that the said appeal be advanced upon the calendar of your Honorable Court, to an early hearing.

GEORGE D. COLLINS,
Attorney for Walter N. Dimmick, the Appellant.

Notice is hereby given you that on Monday, the 25th day of April, A. D. 1904, at the opening of the court on that day, the appellant, Walter N. Dimmick, will present to the Supreme Court of the United States, the foregoing motion. The said motion will be made upon the record and the papers on file in the cause, and on the grounds in said motion set forth.

Respectfully,

GEORGE D. COLLINS,

Attorney for Walter N. Dimmick, the Appellant.

To the appellee, John W. Tompkins, and to the Attorney General of the United States.